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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/519,071	12/23/2004	Hendricus Franciscus van der Eerden	000023.00122	7470
27557	7590	08/21/2009		
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EXAMINER				
LUK, EMMANUEL S				
ART UNIT		PAPER NUMBER		
1791				
MAIL DATE		DELIVERY MODE		
08/21/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/519,071

Applicant(s)

VAN DER EERDEN ET AL.

Examiner

EMMANUEL S. LUK

Art Unit

1791

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 July 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 49, 51, 69-82, 88, 89, 92, 94, 98-101, 113, 114, 116, 117 and 119-127 is/are pending in the application.
- 4a) Of the above claim(s) 1 and 69-82 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 99-101, 114 and 117 is/are allowed.
- 6) ☒ Claim(s) 49, 51, 88, 89, 92, 94, 95, 98, 113, 116, 119, 120 and 123-127 is/are rejected.
- 7) ☒ Claim(s) 121 and 122 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 11/25/08; 7/29/09
- 4) ☐ Interview Summary (PTO-813)
Paper No(s)/Mail Date: _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. The status of claim 69 is incorrectly listed as previously presented. This is incorrect as the claim was withdrawn from consideration, see previous office action dated 4/2/08 and 7/25/08. The previous form PTOL-326 incorrectly stated claim 69 as being rejected, however, in the body of the rejection, claim 69 has not been addressed since it was non-elected as per restriction requirement and as stated in the Applicant's non-election of claim 69. Please update the claim with the correct status identifier.
2. Claims 49, 51, 88, 89, 92, 94, 95, 98, 113, 116, 119, 120, and 123-127 are rejected. Claims 99-101, 114, and 117 are indicated allowable, while claims 121 and 122 are objected. Claims 1, and 69-82 are withdrawn from consideration.
3. Claims 88, 89 have invoked means plus function pursuant to 35 U.S.C. 112, sixth paragraph. Where means plus function language is used to define the characteristics of a machine or manufacture invention, claim limitations must be interpreted to read on only the structures or materials disclosed in the specification and "equivalents thereof." (Two en banc decisions of the Federal Circuit have made clear that the Office is to interpret means plus function language according to 35 U.S.C. 112, sixth paragraph. In the first, *In re Donaldson*, 16 F.3d 1189, 1193, 29 USPQ2d 1845, 1848 (Fed. Cir. 1994), the court held:

The plain and unambiguous meaning of paragraph six is that one construing means-plus-function language in a claim must look to the specification and interpret that

language in light of the corresponding structure, material, or acts described therein, and equivalents thereof, to the extent that the specification provides such disclosure. For example in claim 88, the “means for applying a medium for eliminating adhesion forces...” is sufficient to invoke means plus function.

Claims 98, 99, 124 have failed to invoke means plus function pursuant to 35 U.S.C. 112, sixth paragraph. For example, in claim 98, the drive means lacks the function language pursuant to 35 U.S.C. 112, sixth paragraph.

Response to Arguments

4. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection in response to the newly amended claims such as claim 88 and for the newly added claims 119-127. In regards to the arguments concerning prior art references such as Caldwell, the references has been dropped and in addition, claims 99-101, 114, and 117 have been indicated allowable. In regards claims 51 and 88 and dependent claims, Fay 3205837 provided by the applicants cover the newly amended limitation to claim 88.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 98, 99, and 124 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter

which applicant regards as the invention. The claims fail to properly invoke 35 U.S.C. 112, sixth paragraph and therefore it is unclear as to the particular structure that is claimed.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claim 49 is rejected under 35 U.S.C. 102(b) as being clearly anticipated by Bright (3718524).

Bright teaches the claimed apparatus having the flexible mold cavities 10 on an endless conveyor 12, the turning element 28, as seen in Figure 1, the conveyors and connecting elements connecting the molds to the conveyor with the molds moving in parallel along the conveyor. The mold and connecting elements are moved such that at the release position pass substantially through the center of the axis of the turning element.

9. Claims 51 and 88, 89, 92, 94, 95, 119, 120 are rejected under 35 U.S.C. 102(b) as being anticipated by Fay (3205837)

Fay teaches a molding device having a drum 1 with mold cavities 2 and sintered metal 14 for a porous layer that allows for air pass through and support gas supply

means that are connected via passage 23. The means for applying a medium for eliminating adhesion is shown in Figure 4 via the passage to the porous layer that is connected on all sides as seen in the Figure. The excess pressure means for supplying pressurized fluid is taught by Fay, see Col. 3, lines 66-70, the porous structure being made from sintered metal, see Fay Col. 2, lines 67-68. The reduced-pressure means as shown in Col. 4, lines 41-45, the connecting passage coupled to the pressure means are shown in Figure 4.

In regards to claim 96, the formation made from sintered metal is taught by Fay, the formation via spark erosion is noted, but is a process of forming the sintered metal Fay still teaches the structural limitation.

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.

4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
12. Claims 98, 113, 116, and 123-127 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fay in view of Fay (4957425).

Fay teaches a molding device having a drum 13 with mold cavities 14 and sintered metal 17 for a porous layer that allows for air pass through and support gas supply means 22. The means for applying a medium for eliminating adhesion is shown in Figure 4 via the passage to the porous layer that is connected on all sides as seen in the Figure. The excess pressure means for supplying pressurized fluid is taught by Fay, see Col. 3, lines 66-70, the porous structure being made from sintered metal, see Fay Col. 2, lines 67-68. The reduced-pressure means as shown in Col. 4, lines 41-45, the connecting passage coupled to the pressure means are shown in Figure 4.

In regards to claim 98, as seen the drum of Fay is rotated and thus it is implied that an associated drive means rotate the drum in the direction of rotation, see Figure 1, and Col. 2, lines 36-42.

Fay fails to teach the claimed housing, pressure means with flexible plate, and release device.

Fay teaches a molding device having a drum 13 with mold cavities 14 and sintered metal 17 for a porous layer that allows for air pass through and support gas supply means 22, Fay also teaches the housing 111 that feeds the material through an outlet 116 and the housing conforms to the drum, see Figure 2. Fay also teaches a release device with the movement of the pistons driving the material out, see Figure 5. The pistons in the cavities of the drum are moved to accommodate the materials thus

Art Unit: 1791

act similar to flexible plates due to the pressure of the pressure means. The knives 114, 113, act as cutting devices in the passage of the mass feed member.

Allowable Subject Matter

13. Claims 99-101, 114, and 117 are allowed.
14. Claims 121 and 122 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
15. The following is a statement of reasons for the indication of allowable subject matter: The prior art of record for claims 99-101, 114, and 117 fail to teach the claimed drum with flexible premoulds and with the gas pressure means for both excess and reduced pressures. The prior art of record for claims 121 and 122 fail to teach the claimed molding device with the further claimed release device arranged at the release position in regards to the claimed molding device.

Conclusion

16. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within

Art Unit: 1791

TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

17. Any inquiry concerning this communication or earlier communications from the examiner should be directed to EMMANUEL S. LUK whose telephone number is (571)272-1134. The examiner can normally be reached on Monday-Fridays from 9 to 5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra N. Gupta can be reached on (571) 272-1316. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1791

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Yogendra N Gupta/
Supervisory Patent Examiner, Art Unit 1791

EL